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In re Application of	:	OFFICE OF PETITIONS
Hanna et al.	:	
Application No. 09/435,992	:	DECISION DISMISSING
Filed: 8 November, 1999	:	PETITION
Attorney's Docket No. 012712-721	:	

This is a decision on the paper filed on 8 July, 2002, which is treated as a petition requesting that the above-identified application be amended to include six (6) sheets of drawings containing Figures 1, 2a-b, 3a-b, and 4.

The petition is dismissed.

The application was filed on 8 November, 1999. On 10 July, 2002, a final Office action was mailed, setting a three (3) month shortened statutory period for reply.

On 22 April, 2002, an amendment was filed, accompanied by six (6) sheets of drawings. On 8 July, 2002, the present petition was filed, accompanied by a duplicate copy of the drawings. Petitioners state, via the declaration of joint inventor Hariharan, that the drawings are described in the specification of the present patent application, and that the drawings "are the identical figures, the results of which are described in [the present patent application]."

At the outset, the U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals that no sheets of drawings were filed on 8 November, 1999, since no such sheets of drawings are present among the application papers received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioner believes the page was among the papers he included in the application is not more persuasive than the

Application No. 09/435,992

actual papers shown to have been received by the official file. Still further, the question of new matter is not an issue here. Six (6) sheets of drawings were simply not filed in the USPTO on 8 November, 1999. Matter included in Figures 1, 2a-b, 3a-b, and 4 may be submitted as an amendment for consideration by the examiner under MPEP sections 608.02(p) and 608.04. In view of the above, the application cannot be accorded 8 November, 1999, as the application filing date with the drawings of Figures 1, 2a-b, 3a-b, and 4 as a part of the original disclosure.

In this case, petitioners neither assert that the missing drawings was deposited on 8 November, 1999, nor request the 22 April, 2002 (the date the drawings were supplied) filing date. Instead, applicants, in essence, seek to amend the application to include six (6) sheets of drawings. However, no petition under 37 CFR 1.182 is necessary for that purpose. Amendments to the specification may be entered by the primary examiner without petition so long as the amendment contains no new matter.¹

Accordingly, the petition is inappropriate and is subject to dismissal. As the petition was not due to an error on the part of the USPTO, a petition fee of \$130.00 will be assessed to counsel's deposit account, No. 03-3975, as authorized on the fee transmittal sheet filed 4 September, 2001.

Petitioners should submit an amendment requesting entry of the six (6) sheets of drawings containing Figures 1, 2a-b, 3a-b, and 4. If an amendment is filed requesting entry of the drawings, the drawings will be reviewed by the examiner for new matter.

It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).² A review of the record reveals that Claims 60-85 as amended on 22 April, 2002, are method claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

The application is being returned to Technology Center 1600 for further processing.

¹37 CFR 1.121(b).

²MPEP 601.01(f).

Application No. 09/435,992

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



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